



Upper Tribunal
(Immigration and Asylum Chamber)

Appeal Number: EA/00018/2015

THE IMMIGRATION ACTS

Heard at Newport
On 22 August 2017

Decision & Reasons Promulgated
On 08 September 2017

Before

UPPER TRIBUNAL JUDGE GRUBB

Between

ENTRY CLEARANCE OFFICER - MANILA

Appellant

and

JOSEPH SENG WOO LAU

Respondent

Representation:

For the Appellant: Mr M Diwyncz, Senior Home Office Presenting Officer

For the Respondent: The Sponsor

DECISION AND REASONS

1. Although this is an appeal by the Entry Clearance Officer ("ECO"), for convenience I will refer to the parties as they appeared before the First-tier Tribunal.

Introduction

2. The appellant is a citizen of Malaysia who was born on 6 November 1993. On 23 April 2015, the ECO refused his application for an EEA family permit as the family member of an EEA national under reg 12 of the Immigration (EEA) Regulations 2006 (SI 2006/1003 as amended). The ECO was not satisfied that the appellant had established as a "family member" in that he had not established that he was

dependent on his mother who is the civil partner of an EEA national as defined in reg 7(1)(b).

3. The appellant appealed to the First-tier Tribunal. Judge K Real allowed the appellant's appeal. She was satisfied that the appellant had established that the sponsor provided financial support, in part, to provide for his "basic needs". He was, therefore, a family member of the civil partner of an EEA national and was entitled to a family permit under reg 12.
4. The ECO appealed to the Upper Tribunal on a number of grounds, in essence contending that the judge had inadequate evidence to establish that the financial support the appellant received from the sponsor provided for his essential or basic needs.
5. Permission was initially refused by the First-tier Tribunal, but on 30 May 2017 the Upper Tribunal (UTJ Frances) granted the ECO permission to appeal.
6. At the hearing before me, the ECO was represented by Mr Diwyncz. The appellant was not legally represented but the sponsor, Liane Gauder attended the hearing and spoke on the appellant's behalf.

The Judge's Decision

7. The judge's reasons are at paras 15-21 of her determination. She accepted that the appellant was in receipt of financial support from the sponsor. In Malaysia (the judge inadvertently referred to the appellant living in the "Philippines"), the judge accepted that the appellant lived with his maternal aunt. He did not have to meet any accommodation costs. However, the judge found that nevertheless, despite his income, his bank account demonstrated that he depleted his resources each month in order to meet "his basic needs". At paras 15-21, Judge Real reasoned as follows:

"15. It is not in dispute, and I find, that the Appellant has been receiving significant sums of money from his mother in the UK over the past few years. On the basis of the evidence of before me, some very substantial sums have been spent to fund courses for the Appellant. I find these do not count as basic needs and I take them out of account. However the last course was undertaken about 2.5 to 3 years ago and large sums have continued to be sent from his mother in the UK. In particular the documents show a payment of £2000 on 8th December 2014 and £3000 on 10th February 2015. I am satisfied that financial support is in fact being received by the Appellant from his mother, who is the civil partner of the EEA sponsor.

16. I turn to the question of whether the Appellant is in a position to support himself in order to meet his basic needs. The documentary evidence submitted with the application and subsequently has focussed upon the financial situation of the Appellant's mother and her partner, the provision of financial support by them, and has evidenced the Appellant's employment, but does not directly provide an answer to this issue. I do not find that the fact that the Appellant has employment and income of his own to be determinative.

17. There are some bank statements of the Appellant from 2014 and 2015 which show that his salary is paid into his account and then his account is depleted to a minimal balance prior to the next payment of his salary. There are some cash deposits shown separately to the salary. It is not possible to determine from the documents how the money is being spent, but there is no evidence of a significant or increasing credit balance. The monthly living costs stated on the Appellant's application (RM 2300) outstrip the salary as it was at that same point (RM 1681.75 net). I find all of this to be consistent with the Appellant's case as it is before me, that is, that he relies on the financial support of his mother to meet his basic needs.
18. The Appellant did not have the benefit of legal representation and his sponsor, who was his representative at the hearing, was frank in acknowledging, as she became cognisant of the key issue, that a calculation of living costs would have assisted. However I bear in mind that there is no particular requirement as to the form of evidence, simply that matters are established to the required standard. I found the sponsor forthcoming in her answers and she was able to give detailed evidence, and the manner in which the case was put forward and the preponderance of paperwork I found to be indicative of a genuine attempt to assist the Tribunal. For example she was clear where money in the past had been spent on courses and she volunteered the information about the Appellant's now increased salary. For these reasons I found her evidence to be credible, and found nothing that suggested unreliability as to the facts she recounted about the circumstances of the Appellant.
19. The sponsor gave an estimate of RM 15,000 to 20,000 per month which would be necessary to live an independent life in the Philippines. Quite aside from whether this is an accurate estimate, having regard to the social and financial circumstances of this Appellant in the Philippines I do not find that this is the standard that I am required to consider, because the evidence was that the Appellant lives in a family home, which would be the usual situation for any young person in the Philippines before they got married. For that reason I take the narrower view invited by Mr. Howells, that the support required to meet this Appellant's basic needs does not presently include the finances necessary to rent his own accommodation. Acknowledging this may not be the permanent situation I do not find that the evidence before me establishes that the accommodation will be withdrawn imminently.
20. It was common ground that the Appellant's current basic needs involved food, clothing, and petrol. I accept the sponsor's evidence that the Appellant does not have luxuries, particularly because she was immediately able to give examples of common items that he did not own, such as an iphone and laptop. I also found the necessity for material support in respect of basic items was reinforced by her evidence of a recent trip to Hungary where they had not only paid the Appellant's travel costs and given him £2500, but also purchased clothes for him.
21. Taking the evidence overall I am satisfied that the Appellant cannot support himself from his own resources, even with the provision of free accommodation in his current social circumstances, because he is regularly depleting his resources received as a combination of salary from employment and transfers from his mother in the UK in order to meet his

basic needs. I am satisfied that there is a shortfall between his salary and that which he requires to be in a position to support himself, and that the material support he receives from his mother in the UK is necessary.”

Discussion

8. In his submissions, Mr Diwyncz contended that evidence, in the form of a schedule of income and expenditure, would have helped in determining the appeal. However, he conceded that the judge’s decision was within the spectrum of reasonable findings that the judge could make on the basis of the evidence. Nevertheless, he submitted that the judge’s reasons were inadequate.
9. In determining whether the appellant was dependent upon the sponsor for the purposes of reg 7(1)(b) of the EEA Regulations 2006, the judge correctly directed herself on the law in accordance with the Court of Appeal’s decision in Lim v Entry Clearance Officer, Manila [2015] EWCA Civ 1383 at para 12 of her determination. At [32], Elias LJ set out the legal position as follows:

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs. If, on the other hand, he cannot support himself from his own resources, the court will not ask why that is the case, save perhaps where there is an abuse of rights.”
10. In this case, the judge clearly found on the evidence that the sponsor provided financial support to the appellant. She accepted, unequivocally, the sponsor’s evidence and, as Mr Diwyncz acknowledged, the judge was entitled to do so. Her evidence was that the appellant could not live without financial support. At para 20 of her determination, Judge Real noted the evidence that the appellant lacked certain luxuries (such as an I-phone and laptop) and that a recent trip to Hungary had been paid for including purchasing him clothes for the trip. Importantly, at para 20, she notes and accepted the evidence that the appellant’s bank account, in which he received both his salary and transfers from his mother in the UK, was depleted each month. Although the judge also noted that it would have been helpful to have had a “calculation of living costs” (see para 18 of the determination), that was not a requirement in order for the appellant to succeed. As the court in Lim emphasised, dependency to meet basic needs is “a simple matter of fact”. Here the judge had the evidence of the sponsor together with evidence that the appellant did not seem to spend money on luxuries and his money, received from his income together with that from his mother in the UK, was exhausted each month.
11. In my judgment, the judge was entitled to accept the evidence before her and find that the appellant was dependent on his mother and that that dependency went to meet his basic needs. As a consequence, he had established that he was a “family member” of the civil partner of an EEA national. Judge Real did not err in law in allowing the appellant’s appeal on that basis.

Decision

12. The decision of the First-tier Tribunal to allow the appellant's appeal under reg 12 of the EEA Regulations 2006 did not involve the making of an error of law. That decision stands.
13. Accordingly, the ECO's appeal to the Upper Tribunal is dismissed.

Signed



A Grubb
Judge of the Upper Tribunal

7 September 2017

TO THE RESPONDENT
FEE AWARD

Judge Real did not consider it appropriate to make a fee award. I was not invited to reach any different decision and so that decision stands.

Signed



A Grubb
Judge of the Upper Tribunal

7 September 2017

